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C&H SUGAR COMPANY, INC. AND
SUGAR REFINING, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RAY STRONG, on behalf of himself and all
similarly situated individuals

Plaintiff,

v.

C&H SUGAR COMPANY, INC.;
SUGAR REFINING, INC.; AND DOES 1-
100.

Defendants.

Case No.: 3:17-CV-00480-RS

**DEFENDANTS' ANSWER TO
COMPLAINT**

Defendants C&H Sugar Company, Inc. ("C&H") and American Sugar Refining, Inc. ("ASR") (collectively, "Defendants"), in answer to the Complaint ("Complaint") of Plaintiff Ray Strong, on behalf of himself and all similarly situated individuals ("Plaintiff") on file herein, admit, deny, and aver as follows:

1. In response to the allegations in Paragraph 1 of the Complaint, Defendants state that such allegations are conclusions of law to which no responsive pleading is demanded and which shall be taken as denied or avoided.

2. In response to the allegations in Paragraph 2 of the Complaint, Defendants state that such allegations are conclusions of law to which no responsive pleading is demanded and

1 which shall be taken as denied or avoided.

2 3. Defendants admit the allegations in Paragraph 3 of the Complaint.

3 **THE PARTIES**

4 4. In response to the allegations in Paragraph 4 of the Complaint, Defendants deny
5 that that Plaintiff is or was at any time employed by Defendant ASR. Defendants admit the
6 remaining allegations contained in Paragraph 4 of the Complaint.

7 5. Defendants admit the allegations in Paragraph 5 of the Complaint.

8 6. In response to the allegations in Paragraph 6 of the Complaint, Defendants deny
9 that Plaintiff or any Collective Action Members or California Class Members are or were at any
10 time employed by Defendant ASR. Defendants further deny that ASR employed any employees
11 in California. Defendants admit the remaining allegations contained in Paragraph 6 of the
12 Complaint.

13 7. In response to the allegations in Paragraph 7 of the Complaint, Defendants state
14 that such allegations are conclusions of law to which no responsive pleading is demanded and
15 which shall be taken as denied or avoided.

16 8. In response to the allegations in Paragraph 8 of the Complaint, Defendants state
17 that such allegations are conclusions of law to which no responsive pleading is demanded and
18 which shall be taken as denied or avoided.

19 9. In response to the allegations in Paragraph 9 of the Complaint, Defendants admit
20 that C&H does business in the state of California, that the acts giving rise to this action occurred
21 in this state and in this District, and that Defendant ASR has applied to do business in California.
22 Except as expressly admitted herein, Defendants deny the remaining allegations in Paragraph 9
23 of the Complaint.

24 10. In response to the allegations in Paragraph 10 of the Complaint, Defendants admit
25 that venue is proper in this District, that C&H operates and does substantial business within the
26 Northern District of California, that Plaintiff was employed by C&H, that the acts alleged in the
27 Complaint have an effect on Plaintiff and similarly situated individuals within the State of
28 California. Defendants further admit that C&H maintains offices, operates a business, employs

persons, and conducts business in, the state of California. Except as expressly admitted herein Defendants deny the remaining allegations in Paragraph 10, except those allegations which are conclusions of law to which no responsive pleading is demanded and which shall be taken as denied or avoided.

COLLECTIVE ACTION ALLEGATIONS

11. Defendants incorporate, as though fully set forth herein, their responses to Paragraphs 1 through 10 of the Complaint, as set forth above.

12. In response to Paragraph 12 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded and which shall be taken as denied or avoided.

13. In response to Paragraph 13 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded and which shall be taken as denied or avoided.

14. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. In response to the allegations in Paragraph 16 of the Complaint, Defendants admit that Plaintiff and the alleged Collective Action Members are subject to C&H's practices, policies, and plans of compensating them for hours worked. Except as expressly admitted herein Defendants deny the remaining allegations in Paragraph 16 of the Complaint.

17. In response to the allegations in Paragraph 17 of the Complaint, Defendants admit that Plaintiff purports to bring the action on behalf of a class of allegedly similarly situated individuals, and that the proposed Collective Action is asserted on behalf of all individuals employed by Defendants and represented by the Sugar Workers Union ("SWU") in non-exempt hourly positions to provide work refining and processing raw sugar into refined sugar and related activities in the state of California who performed more than 40 hours of work in a workweek and received non-discretionary bonuses at any time from three years before the filing of the

1 Complaint or the effective date of any tolling agreement, whichever is earlier, and ending at the
2 time this action proceeds to final judgment or settlement. Defendants lack sufficient knowledge
3 to admit or deny the remaining allegations contained in Paragraph 17 of the Complaint.

4 18. Defendants admit the allegations in Paragraph 18 of the Complaint.

5 19. Defendants admit that the allegations in Paragraphs 19(a) through 19(h) constitute
6 alleged common questions of law and/or fact in the action that may affect the rights of each
7 member of the Collective Action. Except as expressly admitted herein Defendants deny the
8 remaining allegations in Paragraph 19 of the Complaint.

9 20. Defendants admit the allegations in Paragraph 20 of the Complaint.

10 21. Defendants lack sufficient knowledge to admit or deny the allegations contained
11 in Paragraph 21 of the Complaint.

12 22. In response to Paragraph 22 of the Complaint, Defendants state that the
13 allegations therein are conclusions of law to which no responsive pleading is demanded and
14 which shall be taken as denied or avoided.

15 23. In response to Paragraph 23 of the Complaint, Defendants state that the
16 allegations therein are conclusions of law to which no responsive pleading is demanded and
17 which shall be taken as denied or avoided.

18 24. In response to Paragraph 24 of the Complaint, Defendants admit that the names
19 and addresses of additional Collective Action members are available from Defendants and that
20 notice, if any, should be provided by first class mail. Except as expressly admitted herein
21 Defendants deny the remaining allegations in Paragraph 24 of the Complaint.

22 **CLASS ACTION ALLEGATIONS**

23 25. Defendants incorporate, as though fully set forth herein, their responses to
24 Paragraphs 1 through 24 of the Complaint, as set forth above.

25 26. In response to the allegations in Paragraph 26 of the Complaint, Defendants admit
26 that Plaintiff brings the action on behalf of class allegedly similarly situated individuals pursuant
27 to Federal Rule of Procedure 23, and that the proposed class is asserted on behalf of all allegedly
28 similarly situated individuals employed by Defendants and represented by the SWU in non-

1 exempt hourly positions to provide work refining and processing raw sugar into refined sugar
2 and related activities in the state of California and performed more than 40 hours of work in a
3 workweek and received non-discretionary bonuses at any time from three years before the filing
4 of the Complaint or the effective date of any tolling agreement, whichever is earlier, and ending
5 at the time this action proceeds to final judgment or settlement. Defendants lack sufficient
6 knowledge to admit or deny the remaining allegations contained in Paragraph 26 of the
7 Complaint.

8 27. Defendants admit the allegations in Paragraph 27 of the Complaint.

9 28. In response to the allegations in Paragraph 28 of the Complaint, Defendants admit
10 that the proposed class may consist of over 40 non-exempt employees employed by C&H who
11 performed work in the state of California during the applicable limitations period(s) and that
12 members of the class are ascertainable. Except as expressly admitted herein, Defendants deny the
13 remaining allegations in Paragraph 28 of the Complaint.

14 29. Defendants admit that the allegations in Paragraphs 29(a) through 29(q) constitute
15 alleged common questions of law and/or fact in the action that may affect the rights of each
16 member of the proposed California Class. Except as expressly admitted herein Defendants deny
17 the remaining allegations in Paragraph 29 of the Complaint.

18 30. Defendants deny the allegations in Paragraph 30 of the Complaint.

19 31. Defendants deny the allegations in Paragraph 31 of the Complaint.

20 32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

21 33. Defendants deny the allegations in Paragraph 33 of the Complaint.

22 **GENERAL FACTUAL ALLEGATIONS**

23 34. In response to the allegations in Paragraph 34 of the Complaint, Defendants admit
24 that Plaintiff is a non-exempt employee of C&H and that his duties primarily consist of manual
25 labor related to the refining of raw sugar and related activities. Defendants lack sufficient
26 knowledge to admit or deny the remaining allegations contained in Paragraph 34 of the
27 Complaint.

28 35. In response to the allegations in Paragraph 35 of the Complaint, Defendants admit

1 that the proposed Collective Action and California Class members perform the duties described
2 in Paragraph 34 at C&H's refining facility in Crockett, California. Except as expressly admitted
3 herein, Defendants' deny the remaining allegations in Paragraph 35 of the Complaint.

4 36. Defendants admit the allegations contained in Paragraph 36 of the Complaint.

5 37. Defendants admit and aver that ASR is the "paying agent" for C&H and admit the
6 remaining allegations contained in Paragraph 37 of the Complaint.

7 38. Defendants admit the allegations contained in Paragraph 38 of the Complaint.

8 39. In response to the allegations in Paragraph 39 of the Complaint, Defendants aver
9 that there was no such "practice of exclusion" and admit that they have never collectively or
10 individually sought an opinion from the United States Department of Labor of whether such
11 alleged "practice of exclusion" as described therein would be lawful for the purposes of FLSA
12 compliance. Except as expressly admitted herein Defendants deny the remaining allegations in
13 Paragraph 39 of the Complaint.

14 40. Defendants admit the allegations contained in Paragraph 40 of the Complaint.

15 41. In response to the allegations in Paragraph 41 of the Complaint, Defendants admit
16 that the Agreement referenced therein provides for certain bonus payments to employees,
17 including a Christmas Award. Defendants further admit that employees must satisfy certain
18 conditions to earn the Christmas Award, that a certain equation is set forth for calculating the
19 Christmas Award amount, and that the Agreement does not specifically provide that Defendants
20 have discretion to determine whether the Christmas Award is paid or to modify the amount of the
21 Christmas Award. Except as expressly admitted herein Defendants deny the remaining
22 allegations in Paragraph 41 of the Complaint.

23 42. Defendants admit the allegations contained in Paragraph 42 of the Complaint.

24 43. Defendants admit the allegations contained in Paragraph 43 of the Complaint.

25 44. In response to the allegations in Paragraph 44 of the Complaint, Defendants lack
26 sufficient knowledge to respond to the allegations that when Plaintiff or other members of the
27 Collective Action or California Class earned the meal allowance they did not incur any expense
28 at Defendants' convenience. Defendants admit the remaining allegations in Paragraph 44 of the

Complaint.

45. In response to the allegations in Paragraph 45 of the Complaint, Defendants deny that Plaintiff and the other members of the Collective Action or California Class consistently worked 60-80-hour workweeks. Defendants further deny that they pay Plaintiff and the other members of the Collective Action or California Class 1.5x their regular rate of pay, excluding the extra compensation from the shift differential, for all hours worked above 40 in one workweek. Defendants admit the remaining allegations in Paragraph 45 of the Complaint.

46. In response to the allegations in Paragraph 46 of the Complaint, Defendants admit they received a copy of a letter dated March 2, 2016, to the California LWDA describing various alleged violations of the California Labor Code. Defendants admit the remaining allegations in Paragraph 46 of the Complaint.

FIRST CLAIM FOR RELIEF

(Violations of the Fair Labor Standards Act)

47. Defendants incorporate, as though fully set forth herein, their responses to Paragraphs 1 through 46 of the Complaint, as set forth above.

48. Defendants admit the allegations in Paragraph 48 of the Complaint.

49. Defendants admit the allegations in Paragraph 49 of the Complaint.

50. In response to the allegations in Paragraph 50 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded and which shall be taken as denied or avoided.

51. Defendants admit the allegations in Paragraph 51 of the Complaint.

52. Defendants admit the allegations in Paragraph 52 of the Complaint but aver that Plaintiff and the Collective Action members very often volunteered to work overtime hours.

53. Defendants admit the allegations in Paragraph 53 of the Complaint.

54. Defendants deny the allegations in Paragraph 54 of the Complaint.

55. In response to the allegations in Paragraph 55 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit said allegations on information and belief.

1 56. In response to the allegations in Paragraph 56 of the Complaint, Defendants state
2 that the allegations therein are conclusions of law to which no responsive pleading is demanded
3 but nonetheless admit said allegations on information and belief.

4 57. In response to the allegations in Paragraph 57 of the Complaint, Defendant lacks
5 sufficient knowledge to respond to the allegation that Defendants did not issue any earned but
6 unpaid overtime wages based on the new regular rate to Plaintiff and other members of the
7 Collective Class. Defendants admit the remaining allegations in Paragraph 57 of the Complaint.

8 58. In response to the allegations in Paragraph 58 of the Complaint, Defendant lacks
9 sufficient knowledge to respond to the allegation that Defendants did not issue any earned but
10 unpaid overtime wages based on the new regular rate to Plaintiff and other members of the
11 Collective Class. Defendants admit the remaining allegations in Paragraph 58 of the Complaint.

12 59. In response to the allegations in Paragraph 59 of the Complaint, Defendants state
13 that the allegations therein are conclusions of law to which no responsive pleading is demanded
14 but nonetheless admit said allegations on information and belief.

15 60. Defendants admit the allegations in Paragraph 60 of the Complaint.

16 61. In response to the allegations in Paragraph 61 of the Complaint, Defendants state
17 that the allegations therein are conclusions of law to which no responsive pleading is demanded
18 and which shall be taken as denied or avoided.

19 62. In response to the allegations in Paragraph 62 of the Complaint, Defendant lacks
20 sufficient knowledge to respond to the allegation that Defendants did not pay any earned but
21 unpaid overtime wages based on the new regular rate to Plaintiff and other members of the
22 Collective Class. Defendants admit the remaining allegations in Paragraph 62 of the Complaint.

23 63. In response to the allegations in Paragraph 63 of the Complaint, Defendant lacks
24 sufficient knowledge to respond to the allegation that Defendants did not issue any earned but
25 unpaid overtime wages based on the new regular rate to Plaintiff and other members of the
26 Collective Class. Defendants admit the remaining allegations in Paragraph 63 of the Complaint.

27 64. In response to the allegations in Paragraph 64 of the Complaint, Defendants state
28 that the allegations therein are conclusions of law to which no responsive pleading is demanded

1 but nonetheless admit said allegations on information and belief.

2 65. In response to the allegations in Paragraph 65 of the Complaint, Defendants state
3 that the allegations therein are conclusions of law to which no responsive pleading is demanded
4 and which shall be taken as denied or avoided.

5 66. In response to the allegations in Paragraph 66 of the Complaint, Defendants lack
6 sufficient knowledge to respond to the allegations that when Plaintiff or other members of the
7 Collective Action or California Class earned the meal allowance they did not incur any expense
8 at Defendants' convenience. Defendants admit the remaining allegations in Paragraph 66 of the
9 Complaint.

10 67. Defendants deny the allegations in Paragraph 67 of the Complaint.

11 68. Defendants lack sufficient knowledge to admit or deny the allegations in
12 Paragraph 68 of the Complaint.

13 69. Defendants admit the allegations in Paragraph 69 of the Complaint.

14 70. Defendants deny the allegations in Paragraph 70 of the Complaint.

15 71. In response to the allegations in Paragraph 71 of the Complaint, Defendants admit
16 that Plaintiff on behalf of himself and all other similarly situated individuals in the Collective
17 Action seeks damages, liquidated damages, reasonable attorneys' fees, and costs. Except as
18 expressly admitted herein, Defendants deny the remaining allegations in Paragraph 71 of the
19 Complaint.

20 **SECOND CLAIM FOR RELIEF**

21 **(Failure to Timely Pay All Wages When Due)**

22 72. Defendants incorporate, as though fully set forth herein, their responses to
23 Paragraphs 1 through 71 of the Complaint, as set forth above.

24 73. In response to the allegations in Paragraph 73 of the Complaint, Defendants state
25 that the allegations therein are conclusions of law to which no responsive pleading is demanded
26 but nonetheless admit such allegations on information and belief.

27 74. In response to the allegations in Paragraph 74 of the Complaint, Defendants state
28 that the allegations therein are conclusions of law to which no responsive pleading is demanded

1 but nonetheless admit such allegations on information and belief.

2 75. Defendants lack sufficient knowledge to admit or deny the allegations in
3 Paragraph 75 of the Complaint.

4 76. Defendants lack sufficient knowledge to admit or deny the allegations in
5 Paragraph 76 of the Complaint.

6 77. Defendants deny the allegations in Paragraph 77 of the Complaint.

7 78. In response to the allegations in Paragraph 78 of the Complaint, Defendants admit
8 they received a copy of a letter dated March 2, 2016, to the LWDA describing various alleged
9 violations of the California Labor Code. Defendants admit the remaining allegations in
10 Paragraph 78 of the Complaint.

11 79. In response to the allegations in Paragraph 79 of the Complaint, Defendants lack
12 sufficient knowledge to admit or deny the allegations contained therein.

13 **THIRD CLAIM FOR RELIEF**

14 **(Unlawful Withholding of Wages)**

15 80. Defendants incorporate, as though fully set forth herein, their responses to
16 Paragraphs 1 through 79 of the Complaint, as set forth above.

17 81. In response to the allegations in Paragraph 81 of the Complaint, Defendants state
18 that the allegations therein are conclusions of law to which no responsive pleading is demanded
19 but nonetheless admit such allegations on information and belief with the exception that Labor
20 Code § 223 makes it unlawful for an employer to “secretly pay a lower wage while purporting to
21 pay the wage designated by statute or contract.”

22 82. In response to the allegations in Paragraph 82 of the Complaint, Defendants state
23 that the allegations therein are conclusions of law to which no responsive pleading is demanded
24 but nonetheless admit such allegations on information and belief.

25 83. Defendants lack sufficient knowledge to admit or deny the allegations in
26 Paragraph 83 of the Complaint.

27 84. Defendants deny the allegations in Paragraph 84 of the Complaint.

28 85. In response to the allegations in Paragraph 85 of the Complaint, Defendants admit

1 they received a copy of a letter dated March 2, 2016, to the LWDA describing various alleged
2 violations of the California Labor Code. Defendants admit the remaining allegations in
3 Paragraph 85 of the Complaint.

4 86. In response to the allegations in Paragraph 86 of the Complaint, Defendants lack
5 sufficient knowledge to admit or deny the allegations contained therein.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

8 87. Defendants incorporate, as though fully set forth herein, their responses to
9 Paragraphs 1 through 86 of the Complaint, as set forth above.

10 88. In response to Paragraph 88 of the Complaint, Defendants state that the
11 allegations therein are conclusions of law to which no responsive pleading is demanded but
12 nonetheless admit such allegations on information and belief.

13 89. In response to Paragraph 89 of the Complaint, Defendants state that the
14 allegations therein are conclusions of law to which no responsive pleading is demanded but
15 nonetheless admit such allegations on information and belief.

16 90. In response to Paragraph 90 of the Complaint, Defendants state that the
17 allegations therein are conclusions of law to which no responsive pleading is demanded but
18 nonetheless admit such allegations on information and belief.

19 91. In response to the allegations in Paragraph 91 of the Complaint, Defendants lack
20 sufficient knowledge to admit or deny the allegation that Defendants failed to properly pay
21 Plaintiff and the California Class members all earned overtime wages. Defendants deny the
22 remaining allegations contained in Paragraph 91 and aver that there exists a good-faith dispute as
23 to whether Plaintiff and the California Class are entitled to overtime wages and therefore no
24 waiting-time penalties are owed.

25 92. In response to the allegations in Paragraph 92 of the Complaint, Defendants deny
26 the allegations contained therein and aver that there exists a good-faith dispute as to whether
27 Plaintiff and the California Class are entitled to overtime wages and therefore no waiting-time
28 penalties are owed.

FIFTH CLAIM FOR RELIEF

(Failure to Maintain Required Records)

93. Defendants incorporate, as though fully set forth herein, their responses to Paragraphs 1 through 92 of the Complaint, as set forth above.

94. In response to the allegations in Paragraph 94 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

95. In response to the allegations in Paragraph 95 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

96. In response to the allegations in Paragraph 96 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

97. Defendants deny the allegations in Paragraph 97 of the Complaint.

98. Defendants deny the allegations in Paragraph 98 of the Complaint.

99. Defendants lack sufficient knowledge to admit or deny the allegations in Paragraph 99 of the Complaint.

100. Defendants deny the allegations in Paragraph 100 of the Complaint.

SIXTH CLAIM FOR RELIEF

(Failure to Accurate Itemized Wage Statements)

101. Defendants incorporate, as though fully set forth herein, their responses to Paragraphs 1 through 100 of the Complaint, as set forth above.

102. In response to the allegations in Paragraph 102 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

103. In response to the allegations in Paragraph 103 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

1 104. In response to the allegations in Paragraph 104 of the Complaint, Defendants state
2 that the allegations therein are conclusions of law to which no responsive pleading is demanded
3 but nonetheless admit such allegations on information and belief.

4 105. In response to the allegations in Paragraph 105 of the Complaint, Defendants state
5 that the allegations therein are conclusions of law to which no responsive pleading is demanded
6 but nonetheless admit such allegations on information and belief.

7 106. In response to the allegations in Paragraph 106 of the Complaint, Defendants state
8 that the allegations therein are conclusions of law to which no responsive pleading is demanded
9 but nonetheless admit such allegations on information and belief.

10 107. Defendants deny the allegations in Paragraph 107 of the Complaint.

11 108. In response to the allegations in Paragraph 108 of the Complaint, Defendants
12 admit they received a copy of a letter dated March 2, 2016, to the LWDA describing various
13 alleged violations of the California Labor Code. Defendants admit the remaining allegations in
14 Paragraph 108 of the Complaint.

15 109. Defendants deny the allegations in Paragraph 109 of the Complaint.

16 **SEVENTH CLAIM FOR RELIEF**

17 **(California Labor Code Private Attorneys General Act)**

18 110. Defendants incorporate, as though fully set forth herein, their responses to
19 Paragraphs 1 through 110 of the Complaint as set forth above.

20 111. In response to the allegations in Paragraph 111 of the Complaint, Defendants state
21 that the allegations therein are conclusions of law to which no responsive pleading is demanded
22 but nonetheless admit such allegations on information and belief.

23 112. Defendants deny the allegations in Paragraph 112 of the Complaint.

24 113. In response to the allegations in Paragraph 113 of the Complaint, Defendants
25 admit and aver that Plaintiff, as a private attorney general, is entitled to recover applicable
26 statutory penalties on his own behalf, on behalf of all other aggrieved employees, and on behalf
27 of the general public if Plaintiff can prove that he and any other employee or employees are
28 aggrieved employees. Defendants admit the remaining allegations in Paragraph 113 of the

Complaint.

114. In response to the allegations in Paragraph 114 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

115. In response to the allegations in Paragraph 115 of the Complaint, Defendants state that the allegations therein are conclusions of law to which no responsive pleading is demanded but nonetheless admit such allegations on information and belief.

116. Defendants deny the allegations in Paragraph 116 of the Complaint.

117. In response to the allegations in Paragraph 117 of the Complaint, Defendants admit they received a copy of a letter dated March 2, 2016, to the LWDA describing various alleged violations of the California Labor Code. Defendants admit the remaining allegations in Paragraph 117.

117. Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 117¹ of the Complaint.

118. Defendants deny the allegations in Paragraph 118 of the Complaint.

EIGHTH CLAIM FOR RELIEF

(Unfair and Unlawful Business Practices)

120. Defendants incorporate, as though fully set forth herein, their responses to Paragraphs 1 through 118² of the Complaint, as set forth above.

121. Defendants deny the allegations in Paragraph 121 of the Complaint.

122. In responding to the allegations in Paragraph 122 of the Complaint, Defendants admit that Labor Code section 90.5(a) sets forth a public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by

¹ There are two paragraphs numbered 117 in the Complaint. For ease of reference, Defendants' Answer responds to the paragraphs exactly as they are numbered in the Complaint.

² There is no Paragraph 119 in the Complaint. For ease of reference, Defendants' Answer responds to the paragraphs exactly as they are numbered in the Complaint.

1 failing to comply with minimum labor standards. Except as expressly admitted herein,
2 Defendants deny the remaining allegations in Paragraph 122 of the Complaint.

3 123. In responding to the allegations in Paragraph 123 of the Complaint, Defendants
4 admit that Plaintiff and the California Class Members seek restitution of unpaid wages,
5 disgorgement of profits, penalties, and injunctive relief in their Complaint. Defendants lack
6 sufficient knowledge to admit or deny the remaining allegations in Paragraph 123 of the
7 Complaint.

8 **NINTH CLAIM FOR RELIEF**

9 **(Declaratory Judgment)**

10 124. Defendants incorporate, as though fully set forth herein, their responses to
11 Paragraphs 1 through 123 of the Complaint, as set forth above.

12 125. Responding to the allegations in Paragraph 125 of the Complaint, Defendants
13 admit that Plaintiff desires a declaration of rights and other relief available pursuant to the
14 California Declaratory Judgment Act. Except as expressly admitted herein, Defendants deny the
15 remaining allegations in Paragraph 125 of the Complaint.

16 126. Defendants deny the allegation in Paragraph 126 of the Complaint.

17 127. Defendants deny the allegation in Paragraph 127 of the Complaint.

18 128. Defendants lack sufficient knowledge to admit or deny the allegations in
19 Paragraph 128 of the Complaint.

20 129. Defendants deny the allegation in Paragraph 129 of the Complaint.

21 130. Defendants deny the allegation in Paragraph 130 of the Complaint.

22 131. Defendants lack sufficient knowledge to admit or deny the allegations in
23 Paragraph 131 of the Complaint.

24 132. Defendants deny the allegation in Paragraph 132 of the Complaint.

25 133. Defendants deny the allegation in Paragraph 133 of the Complaint.

26 134. Defendants lack sufficient knowledge to admit or deny the allegations in
27 Paragraph 134 of the Complaint.

28 135. Defendants deny the allegation in Paragraph 135 of the Complaint.

- 1 136. Defendants deny the allegation in Paragraph 136 of the Complaint.
- 2 137. Defendants lack sufficient knowledge to admit or deny the allegations in
- 3 Paragraph 137 of the Complaint.
- 4 138. Defendants deny the allegation in Paragraph 138 of the Complaint.
- 5 139. Defendants deny the allegation in Paragraph 139 of the Complaint.
- 6 140. Defendants lack sufficient knowledge to admit or deny the allegations in
- 7 Paragraph 140 of the Complaint.
- 8 141. Defendants deny the allegation in Paragraph 141 of the Complaint.
- 9 142. Defendants deny the allegation in Paragraph 142 of the Complaint.
- 10 143. Defendants lack sufficient knowledge to admit or deny the allegations in
- 11 Paragraph 143 of the Complaint.
- 12 144. Defendants deny the allegation in Paragraph 144 of the Complaint.
- 13 145. Defendants deny the allegation in Paragraph 145 of the Complaint.
- 14 146. Defendants lack sufficient knowledge to admit or deny the allegations in
- 15 Paragraph 146 of the Complaint.
- 16 147. Defendants deny the allegation in Paragraph 147 of the Complaint.
- 17 148. Defendants deny the allegation in Paragraph 148 of the Complaint.
- 18 149. Defendants lack sufficient knowledge to admit or deny the allegations in
- 19 Paragraph 149 of the Complaint.
- 20 150. Defendants deny the allegation in Paragraph 150 of the Complaint.
- 21 151. Defendants deny the allegation in Paragraph 151 of the Complaint.
- 22 152. Defendants lack sufficient knowledge to admit or deny the allegations in
- 23 Paragraph 152 of the Complaint.
- 24 153. Defendants deny the allegation in Paragraph 153 of the Complaint.
- 25 154. Defendants deny the allegation in Paragraph 154 of the Complaint.
- 26 155. Defendants lack sufficient knowledge to admit or deny the allegations in
- 27 Paragraph 155 of the Complaint.
- 28 156. Defendants deny the allegation in Paragraph 156 of the Complaint.

1 157. Defendants deny the allegation in Paragraph 157 of the Complaint.

2 158. Defendants lack sufficient knowledge to admit or deny the allegations in
3 Paragraph 158 of the Complaint.

4 159. Defendants deny the allegation in Paragraph 159 of the Complaint.

5 160. Defendants deny the allegation in Paragraph 160 of the Complaint.

6 161. Defendants lack sufficient knowledge to admit or deny the allegations in
7 Paragraph 161 of the Complaint.

8 162. Defendants deny the allegation in Paragraph 162 of the Complaint.

9 163. Defendants deny the allegation in Paragraph 163 of the Complaint.

10 164. Defendants lack sufficient knowledge to admit or deny the allegations in
11 Paragraph 164 of the Complaint.

12 165. Defendants deny the allegation in Paragraph 165 of the Complaint.

13 166. Defendants deny the allegation in Paragraph 166 of the Complaint.

14 167. Defendants lack sufficient knowledge to admit or deny the allegations in
15 Paragraph 167 of the Complaint.

16 168. Defendants deny the allegation in Paragraph 168 of the Complaint.

17 169. Defendants deny the allegation in Paragraph 169 of the Complaint.

18 170. Defendants lack sufficient knowledge to admit or deny the allegations in
19 Paragraph 170 of the Complaint.

20 171. Defendants deny the allegation in Paragraph 171 of the Complaint.

21 172. Defendants deny the allegation in Paragraph 172 of the Complaint.

22 173. Defendants lack sufficient knowledge to admit or deny the allegations in
23 Paragraph 173 of the Complaint.

24 174. Defendants deny the allegation in Paragraph 174 of the Complaint.

25 **PRAYER FOR RELIEF**

26 Responding to Plaintiff's prayer for relief, Defendants deny that Plaintiff is entitled to
27 any of the relief requested.

AFFIRMATIVE AND OTHER DEFENSES

Without admitting any of the facts alleged in the Complaint, Defendants hereby submit the following affirmative and other defenses, which are pleaded in the alternative and do not constitute any admission of liability, or that Plaintiff or the putative collective members and class members he purports to represent are entitled to any relief. Defendants may have additional affirmative or other defenses of which they are not presently aware and, as such, expressly reserve the right to assert any such additional affirmative and other defenses.

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff lacks standing to pursue some or all of the claims asserted in the Complaint.

THIRD DEFENSE

Plaintiff is not owed any remuneration of any kind in connection with his employment.

FOURTH DEFENSE

Plaintiff is not entitled to any alleged unpaid overtime because Defendants' payments to Plaintiff of premium remuneration, including but not limited to daily overtime pay (including double-time pay), holiday-work pay, work-on-day-of-rest pay, double-back pay, reporting pay, and staggered-hours pay, is properly creditable toward, and should be offset against, any alleged unpaid overtime pay.

FIFTH DEFENSE

Plaintiff is not entitled to any alleged back overtime pay because certain of the bonus and incentive payments and other premium pay, including but not limited to meal allowance pay, received by Plaintiff are not properly included in the regular rate for purposes of calculating overtime pay.

SIXTH DEFENSE

At all times Plaintiff was paid the complete and timely payment of all wages owed in accordance with the Fair Labor Standards Act ("FLSA") and California Labor Code.

SEVENTH DEFENSE

The claims are barred, in whole or in part, and/or recovery is precluded by the applicable statutes of limitation, including but not limited to 29 U.S.C. § 255; California Code of Civil Procedure §§ 337, 338, 340, and California Business and Professions Code § 17208.

EIGHTH DEFENSE

If the unlawful acts and/or omissions alleged in the Complaint were engaged in by the Defendants, which they deny, the defendants did not do so willfully.

NINTH DEFENSE

At all times relevant to this lawsuit Defendants acted in good faith, on reasonable grounds, and with the reasonable belief that they were in full compliance with the FLSA and California Labor Code.

TENTH DEFENSE

The claims are barred, in whole or in part, because Plaintiff cannot demonstrate that he is entitled to recover liquidated damages. Defendants have at all times compensated Plaintiff in accordance with the law, in good faith, and with reasonable grounds for believing Plaintiff's compensation was in compliance with the FLSA and California Labor Code.

ELEVENTH DEFENSE

Defendant American Sugar Refining, Inc. is not Plaintiff's "employer" for purposes of the FLSA and/or California Labor Code.

TWELFTH DEFENSE

The Court lacks personal jurisdiction over Defendant American Sugar Refining, Inc.

THIRTEENTH DEFENSE

Defendants C & H Sugar Company, Inc. and American Sugar Refining, Inc. are not "joint employers" for purposes of the FLSA or California Labor Code.

FOURTEENTH DEFENSE

Plaintiffs' claims were not caused by any unlawful policy, custom, practice, program, procedure, protocol, or plan promulgated and/or permitted by Defendants.

FIFTEENTH DEFENSE

This action is not a proper class or collective action, and cannot be properly certified as such.

SIXTEENTH DEFENSE

This action cannot be maintained as a collective action because it fails to meet the requirements of 29 U.S.C. § 216(b) and applicable case law.

SEVENTEENTH DEFENSE

This action cannot be maintained as a Federal Rule of Civil Procedure 23 class action or a collective action pursuant to the FLSA because Plaintiff's allegations require an individualized inquiry. Such individual analyses predominate over common questions which defeat the utility and legality of a purported collective action or class action.

EIGHTEENTH DEFENSE

Plaintiff cannot bring this action in a representative capacity because he is not similarly situated to the individuals he purports to represent in this action.

NINETEENTH DEFENSE

Plaintiff is not an adequate representative of the alleged putative class members for purposes of satisfying Rule 23.

TWENTIETH DEFENSE

This case is not appropriate for class certification under Rule 23 because Plaintiff's claims are not typical of the claims of the putative class.

TWENTY-FIRST DEFENSE

This case is not appropriate for class certification under Rule 23 because the facts and law common to the case are insignificant compared to the individual facts and issues particular to Plaintiff and the alleged putative class members.

TWENTY-SECOND DEFENSE

This case is not appropriate for class certification under Rule 23 because Plaintiff cannot demonstrate that the class is so numerous that joinder of all putative members is impracticable.

TWENTY-THIRD DEFENSE

Collective action and class action treatment is not superior to other available methods for the fair and efficient adjudication of Plaintiff's claims and the claims of the putative collective and class action members.

TWENTY-FOURTH DEFENSE

The Court should decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state law claims on the ground that there is no federal question or other federal subject-matter jurisdiction.

TWENTY-FIFTH DEFENSE

The Court should decline to exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(c)(1) and/or (c)(2).

TWENTY-SIXTH DEFENSE

Plaintiff and the putative collective action and class action members are barred from recovering any damages, or any recovery must be reduced by virtue of their failure to exercise reasonable diligence to mitigate their alleged damages.

TWENTY-SEVENTH DEFENSE

Defendants oppose collective and class action certification and dispute the propriety of collective or class treatment of this action. If the Court certifies a collective or class action in this case over Defendants' objections, then Defendants assert the applicable denials and affirmative defenses set forth herein against each and every putative member of the collective action and class action.

TWENTY-EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to exhaust the requisite administrative remedies, statutory and/or contractual remedies available to him prior to commencing this action.

TWENTY-NINTH DEFENSE

Plaintiff is precluded and/or preempted from pursuing his claims in this action because he failed to follow the required grievance procedure pursuant to Section 20 of the June 1, 2012

1 Collective Bargaining Agreement between C & H Sugar Company, Inc. and Sugar Workers
2 Union No. 1 Seafarers International Union of N.A. AFL-CIO.

3 **THIRTIETH DEFENSE**

4 Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

5 **THIRTY-FIRST DEFENSE**

6 Plaintiff is not entitled to equitable relief insofar as he has adequate remedies at law.

7 **THIRTY-SECOND DEFENSE**

8 Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches.

9 **THIRTY-THIRD DEFENSE**

10 Plaintiff is estopped by his conduct from asserting his claims.

11 **THIRTY-FOURTH DEFENSE**

12 Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

13 **THIRTY-FIFTH DEFENSE**

14 Plaintiff's claims are barred, in whole or part, by the doctrine of estoppel because the
15 alleged wage and hour violations at issue in this case, if they did occur, occurred as a result of
16 the operation of a collective bargaining agreement negotiated by Sugar Workers Union 1, which
17 is the exclusive bargaining agent for all terms and conditions of Plaintiff's employment, and the
18 Union failed to specify in the collective bargaining agreement applicable to Plaintiff that the
19 various payments at issue here were to be included in the regular rate of pay for purposes of
20 calculating overtime.

21 **THIRTY-SIXTH DEFENSE**

22 Plaintiff's claims are barred, in whole or part, by the doctrine of estoppel or waiver
23 because Sugar Workers Union 1 is the exclusive agent for the administration and enforcement of
24 the collective bargaining agreement that governs Plaintiff's terms and conditions of employment,
25 and at no time during Plaintiff's employment did the Union contend or assert that the various
26 payments at issue here should have been included in the regular rate of pay for purposes of
27 calculating overtime.

THIRTY-SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because he consented to the alleged conduct of which he now complains.

THIRTY-EIGHTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of avoidable consequences.

THIRTY-NINTH DEFENSE

Defendants maintained proper records and furnished Plaintiff with accurate wage statements in compliance with the California Labor Code.

FORTIETH DEFENSE

Plaintiff's claims brought under the California Business and Professions Code § 17200, et seq. are barred, in whole or in part, because California law does not permit representative actions where liability can only be determined through fact-intensive individualized assessments of alleged wage and hour violations.

FORTY-FIRST DEFENSE

Plaintiff cannot recover any alleged damages in this action because doing so would result in unjust enrichment to Plaintiff which would unduly prejudice Defendants.

FORTY-SECOND DEFENSE

Any recovery pursuant to PAGA is unconstitutionally excessive and violates Defendants' due process rights.

FORTY-THIRD DEFENSE

Plaintiff's cause of action pursuant to PAGA is barred to the extent it seeks to recover penalties on behalf of putative collective action and class action members who are not "aggrieved employees."

FORTY-FOURTH DEFENSE

Defendants reserve the right to raise additional affirmative and other defenses that may subsequently become or appear applicable to Plaintiff's claims.

PRAYER FOR RELIEF

On Plaintiff's Complaint, Defendants pray for judgment as follows:

1. That the Complaint be dismissed in its entirety with prejudice, and that Plaintiff, the Collective Action Members, and the California Class Members, take nothing by this action;
2. That the court award judgment in favor of Defendants;
3. That Defendants be awarded their costs of suit, and
4. Any and such further relief as this court may deem proper.

DATED: April 18, 2017

EPSTEIN BECKER & GREEN, P.C.

By: /s/ Steven Blackburn

Steven R. Blackburn

Matthew Goodin

Attorneys for Defendants

C&H SUGAR COMPANY, INC.

AND SUGAR REFINING, INC.